

**LINOWES
AND BLOCHER LLP**
ATTORNEYS AT LAW

ORIGINAL

SDMS DocID

2210635

June 21, 2006

James B. Witkin
301.961.5189
jwitkin@linowes-law.com

VIA OVERNIGHT MAIL

Mr. Donald S. Welsh
Regional Administrator
EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Herron Farm, Elkton, Maryland

Dear Mr. Welsh:

I am writing on behalf of my client, Herron 393, LLC ("Herron"), which is the contract purchaser of land in Elkton, Maryland known as the Herron Farm or the Elkton Farm ("Property"). As we have discussed with Charlie Howland of your office, on behalf of Herron, we are requesting a meeting with you to discuss the EPA removal action currently being performed on the Property, Herron's plans for further remediation, improvement, and development of the Property, and the waiver of a potential windfall lien. We anticipate that members of the Cecil County Board of Commissioners, and/or the County Administrator, would attend the meeting as well.

Herron's improvement and development of the Property is an important project for Cecil County, Maryland, as is explained more fully in the attached letter to Abe Ferdas of your office, dated June 13, 2006. Briefly, as part of this project, almost 200 acres will become a regional park, and the developer will be contributing extensively to the replacement of a failing water and sewer system. Also, as you may know, this project is part of the Little Elk Creek Area-Wide One Cleanup Program Pilot.

Herron has been working very closely with, and has the full support of, the Cecil County Board of Commissioners. This support is evidenced in the attached letters from the Board of Commissioners, as well as, the Commissioners' desire to participate in any meeting that is scheduled with you concerning this matter. Once we are able to set a date and time convenient for you, we will alert the County Commissioners and confirm their attendance.

Please do not hesitate to contact me if you have any questions concerning this matter. I will follow up with your office to confirm your availability.

Sincerely,

LINOWES AND BLOCHER LLP



James B. Witkin

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

Mr. Donald S. Welsh
June 21, 2006
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cc: Mr. David Meiskin (via US Mail)
Mr. Charles Howland, U.S. EPA (via Electronic Mail)
Mr. Abe Ferdas, U.S. EPA (via Overnight Mail)
Mr. Al Wein, County Administrator Cecil County (via US Mail)
Mr. Nelson Bolender, President, County Commissioners, Cecil County (via US Mail)
Mr. James Carroll, Project Administrator Maryland Voluntary Cleanup Program (via US Mail)

L&B 640664v2/10189.0001

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

June 13, 2006

James B. Witkin
301.961.5189
jwitkin@linowes-law.com

Mr. Abe Ferdas
Director, Hazardous Site Cleanup Division
EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Herron Farm, Elkton, Maryland

Dear Mr. Ferdas:

I am writing on behalf of my client, Herron 393, LLC ("Herron"), which is the contract purchaser of land in Elkton, Maryland known as the Herron Farm or the Elkton Farm ("Property"). As we have discussed with Charlie Howland and Leo Mullin of your office, Herron believes it is an inculpable party, and that it has undertaken "all appropriate inquiry" under CERCLA. Therefore, Herron asserts that it thus far qualifies as a bona fide prospective purchaser, and requests that the United States Environmental Protection Agency ("EPA") provide to Herron an Agreement for Release and Waiver of Lien, CERCLA §107(r) ("Lien Release and Waiver"), confirming that the EPA does not intend to file a windfall lien on the Property. As Herron intends to go to settlement on the Property in a little over one month, time is of the essence to receive this Lien Release and Waiver.

This request is based on the fact that, on September 28, 2005, the EPA authorized the expenditure of funds for remediating contaminants on a portion of the Property. EPA is currently in the process of performing the site removal activities pursuant to this authorization.

According to the July 16, 2003 EPA guidance document on Windfall Liens (the "EPA Guidance Document"), the EPA does not automatically impose a Windfall Lien on an eligible property. Rather, the EPA has considerable discretion and weighs multiple factors when deciding whether to impose a Windfall Lien. Based on this Guidance Document, the Herron Property is a situation where a Windfall Lien waiver is warranted. This is true primarily because Herron will not be reaping a windfall with its purchase of the Property due to any EPA actions. In addition, once Herron owns the Property, Herron will be enhancing the Property as well as the entire Elkton community with the creation of public parks and recreation fields on the Property. Furthermore, Herron's contributions extend to repairing a failing water and sewer system that, once Herron performs its work, will ultimately be a regional water and sewer plant capable of servicing an area larger than the Herron development and improving the water quality of the Little Elk Creek

Mr. Abe Ferdas

June 13, 2006

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by eliminating the minimally treated sewer flow from four existing sewer/cesspools currently vexing the community. The benefits of this water quality improvement will ultimately have a direct positive impact on the Chesapeake Bay, as well as contributing to the goals of the EPA's Chesapeake Bay Clean Water Act of 2000.

Moreover, this development project is very important to Cecil County, as evidenced by the County Commissioners' approval of the project, and their continued support; this backing has been voiced to EPA and the State of Maryland in the letters attached hereto. The Commissioners' support stems from the fact that, along with the water and sewer improvements, almost 200 acres of the property will become a regional park for the residents of Cecil County, and the new infrastructure will enable Cecil County to continue attracting companies and employees to the county. In addition, with respect to the Department of Defense's military base reorganizations, the Cecil County Commissioners are on the record as being committed to providing employment opportunities and housing for the anticipated additional capacity at Aberdeen Proving Ground.

In addition, Herron is willing to consider removing from the Property non-explosive materials and debris (including construction debris), and agreeing to dispose of such materials in accordance with applicable laws, at Herron's expense. This additional contribution by Herron could result in considerable savings to the United States, because EPA would no longer be performing that aspect of the cleanup.

We are aware that there are two methods for the EPA to evidence its intentions for a particular site: a "Comfort Letter" and a legally binding release. It is important for the EPA to understand why it is necessary for Herron to be granted the legally binding Lien Release and Waiver. Due to the significant cost of Herron's development, including the various improvements to the community's infrastructure, there are multiple sources of debt and equity for this project. The cost of the water and sewer improvements alone will be approximately 15 to 20 million dollars. Based on preliminary discussions with potential lenders and equity partners, these parties will not lend the money necessary to make this project possible without the receipt of the formal Lien Release and Waiver. A "Comfort Letter" that is not legally binding will not satisfy these parties, or the developer. It is understandable that for such a large financial commitment from Herron and its lenders, more formal assurances are necessary.

Multiple EPA Regions have provided Lien Release and Waivers (not Comfort Letters) in a number of cases, and we have had an opportunity to review several of these documents. In an effort to facilitate the process of obtaining this document from Region 3, we drafted a Lien Release and Waiver for your review. This document, attached hereto, is based on the EPA Guidance Document and modeled after various other Lien Release and Waivers from EPA Regions 4, 7, and 9.

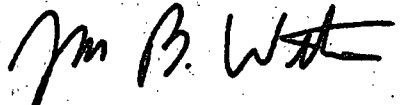
LINOWES
AND **BLOCHER LLP**
ATTORNEYS AT LAW

Mr. Abe Ferdas
June 13, 2006
Page 3

Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,

LINOWES AND BLOCHER LLP



James B. Witkin

cc: Mr. David Meiskin
Mr. Al Wein, County Administrator Cecil County
Mr. Nelson Bolender, President, County Commissioners, Cecil County
Mr. James Carroll, Project Administrator Maryland Voluntary Cleanup Program
Representative Wayne T. Gilchrest, United States Congress

L&B 532114v6/10189.0001

William C. Manlove
1st Commissioner District

Nelson K. Bolender, President
2nd Commissioner District

Harry A. Hepbron
3rd Commissioner District

Phyllis Kilby, Vice-President
4th Commissioner District

Mark H. Guns
5th Commissioner District



CECIL COUNTY GOVERNMENT

129 East Main Street
Elkton, MD 21921

Herron (Concept)

Alfred C. Wein, Jr.
County Administrator
410-996-5203

Board of County Commissioners
107 North Street, Elkton, MD 21921
410-996-5201 Fax: 410-996-1014

Cecil County Information
410-996-5200
410-658-4041

March 30, 2005

Charles Howland
Sr. Asst. Reg. Counsel
U.S. Environmental Protection Agency
Office of the Regional Counsel
1650 Arch Street
Philadelphia, PA 19103-2029

Re: The Villages at Herron Lake, Cecil County, MD

Dear Mr. Howland:

The Cecil County Board of County Commissioners was recently presented with a conceptual sketch plan for the redevelopment of the Herron Farm. This property is located at the intersection of Blue Ball and Zeitler Roads and is known as Tax Map 26, Parcels 21 and 23. Although the Commissioners cannot endorse the specific design at this time, we would like to express our support for the future redevelopment of the property.

Cecil County is working with the applicant, Herron 393, LLC to create a water supply system and sewage treatment system (which will eliminate a number of smaller sewer systems) for this area of the county. Once this system comes on line a number of homes and businesses will be able to eliminate being on individual wells and septic systems. The opportunity exists for this project to improve the County's water and sewer system.

In addition to the above benefits, the stormwater management facilities and creation of a pond will enhance water quality for the area, as well as provide significant recreational opportunities.

The Cecil County Commissioners hope that the EPA will cooperate with the applicant in the due diligence, design, and engineering of this project. If there are any questions please do not hesitate to contact us.

Sincerely,

Nelson K. Bolender
President

William Marlove
1st Commissioner District

Nelson K. Bolender, President
2nd Commissioner District

Harry A. Hepbron, Vice President
3rd Commissioner District

Phyllis Kilby
4th Commissioner District

Mark Guns
5th Commissioner District



CECIL COUNTY GOVERNMENT

129 East Main Street
Elkton, MD 21921

October 24, 2005

Alfred C.
County Admin
410-

Board of County Comm
107 North Street, Elkton, M
410-996-5201 Fax: 410-

Cecil County Info:
410-9
410-6

The Honorable Robert L. Ehrlich, Jr.
Governor
State of Maryland
State House
100 State Circle
Annapolis, MD 21404

Dear Governor Ehrlich:

Congratulations on the success of our Maryland military base defense strategy and the enormous job gains for Maryland resulting from the Base Realignment and Closure Committee (BRAC) recommendations. We recognize that the consolidation of technology activities at the Aberdeen Proving Ground will change the face of the north eastern region of Maryland and spark an unprecedented intellectual invasion.

Cecil County is working in tandem with both Harford and Baltimore Counties as well as a wide spectrum of state and local agencies to develop a unified approach to accommodate this success. We have studied our infrastructure plans and needs in order to ensure the infrastructure enhancements planned for the APG area don't stop at the Susquehanna River. We believe that a fair number of the people and contractors relocating to the north eastern corridor to service APG will be attracted to Cecil County due both to our location and quality of life.

Attached is a comprehensive listing of the infrastructure needs and challenges we face. I believe immediate imperatives for assistance are in transportation upgrades, rail service, education, water/sewer infrastructure and the ease and cost of movement of Maryland residents through the toll facilities which separate Cecil County from the rest of the "free state". We would appreciate your review of the infrastructure needs and look forward to discussing them with you and your staff in greater detail.

I thank you in advance for your attention, support and cooperation in this very important matter.

Budget
Manager
410-996-5291

Department
of Aging
410-996-5295

Economic
Development
410-996-6292

Emergency
Services
410-996-5330

Human
Resources
410-996-5250

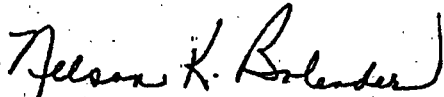
Information
Systems
410-996-5205

Permits and
Inspections
410-996-5237

Planning, Zoning
and Parks
410-996-5220

Public
Works
410-996-5265

Sincerely,



Nelson K. Bolender,
President, Cecil County Board of Commissioners

ENC:

CC: Michael S. Steele, Lt. Governor
Nancy Jacobs, Senator, District 34
E.J. Pipkin, Senator, District 36
Michael D. Smigiel, Sr., Delegate, District 36
Mary-Dulany James, Delegate, District 34A
Sheryl L. Davis-Kohl, Delegate, District 34A
Richard A. Sossi, Delegate, District 36
David D. Rudolph, Delegate, District 34B
Mary Roe Walkup, Delegate, District 36
Harry A. Hepbron, Commissioner, 3rd District
Phyllis Kilby, Commissioner, 4th District
William Manlove, Commissioner, 1st District
Mark H. Gums, Commissioner, 5th District
Barbara Mikulski, U.S. Senator
Paul S. Sarbanes, U.S. Senator
Wayne T. Gilchrest, Congressman, 1st District
C.A. Dutch Ruppersberger, Congressman 2nd District
Benjamin L. Cardin, Congressman, 3rd District
Albert R. Wynn, Congressman, 4th District
Steny H. Hoyer, Congressman, 5th District
Roscoe G. Bartlett, Jr., Congressman, 6th District
Elijah B. Cummings, Congressman, 7th District
Christopher Van Hollen, Jr., Congressman, 8th District
Robert L. Flanigan, Secretary, MDOT
Kendal P. Philbrick, Secretary, MDE
James D. Fielder, Secretary, DLLR
Audrey E. Scott, Secretary MDP
Dr. Carl Roberts, Superintendent, CCPS
Dr. Stephen W. Pannill, President, CCC
Vernon Thompson, Director, OED, Cecil County

BASE REALIGNMENT AND CLOSURE ADDITIONS TO ABERDEEN PROVING GROUND

PRIORITY INITIATIVES FOR CECIL COUNTY READINESS

HIGHWAYS/ROADS

- **Interstate 95 Interchange.** A new interchange between Perryville and North East is envisioned to alleviate the traffic situation at the MD Route 222 and MD Route 272 interchanges with both I-95 and U.S. Route 40. The interchange would also serve to divert truck traffic from U.S. Route 40 and to preserve roadway capacity. It is estimated that the costs of constructing the interchange would be from \$30-\$40 million.
- **Road Improvements Strategic Plan.** Consultant has been hired to fully evaluate roads and intersections in the Cecil County designated growth corridor and develop a plan for improvements in anticipation of build out scenarios. Fully funded by Cecil County (\$110K). County requests MDOT staff participation and support, beginning November 2005 with an expected nine month completion.
- **Route 40 Capacity Enhancement Study.** Concurrent to development of the Road Improvement Strategic Plan, Cecil County requests that MDOT complete analysis and projection of capacity and safety improvements from the Susquehanna River to the Maryland/Delaware boundary, including necessary timelines for the improvements.
- **Routes 213/40 Intersection.** Congestion at this intersection has become an increasing capacity and safety concern. Recent business closures in the vicinity suggest that land acquisition and commercial relocation may be more viable than they have been historically, but that window of opportunity is expected to be brief.

BRIDGES

- **Tydings Memorial Bridge (I-95).** Lack of a commuter toll reduction program already results in a burdensome demand upon the Hatem Memorial Bridge, Route 155 in Harford County, and Routes 40 and 222 in Cecil County and the impacts are expected to increase dramatically with the BRAC decision. Cecil County requests MDOT establish a commuter program similar in effect to that used at the Hatem Memorial Bridge.
- **Hatem Memorial Bridge (Route 40).** Planning for superstructure replacement preceded the BRAC decision and Cecil County requests that MDOT reevaluate the need for a widening of the bridge to six total lanes to accommodate anticipated traffic loads and drastically reduce congestion during construction.

MASS TRANSIT

- **Commuter Rail Service.** Extension of the existing MARC service from Perryville to Elkton and/or Wilmington Delaware will be a key component in responsibly managing increased traffic in the I-95/U.S. 40 corridor. Service to Elkton will result in an estimated additional annual net boardings of 182,880 passengers. Service to Wilmington will result in an estimated additional annual net boardings of 363,728 passengers. These are vehicles that will not be traversing the existing road network. The cost associated with this service extension range from \$18 million to extend to Elkton from \$11 million to extend to Wilmington.

WATER AND SEWER

- **Perryville Water Treatment Plant Upgrades.** An expansion to 2.0 mgd will be necessary to meet BRAC demands. Cecil County is prepared to partner with Perryville for regional use of this water source and discussions are progressing. Perryville is completing its design at this time and can proceed to its bid phase as early as January 2006. Estimate for design/construction of WTP, storage, and distribution is \$11.5 million.
- **Western Corridor Water Distribution – Perryville to Belvidere Road.** Anticipating completion of the 2.0 mgd Perryville water source, Cecil County will construct a 15,000 LF, 16-inch water distribution trunk line to serve this designated growth area and an elevated storage tank would likely be necessary. Estimated cost is \$4.4 million. This trunk line will ultimately be interconnected with the remainder of the Route 40 trunk line for efficient distribution and drought redundancy.
- **Central Corridor Water Distribution – Belvidere Road to North East.** County will construct a 21,000 LF, 16-inch water distribution trunk line to serve this designated growth area. Estimated cost is \$3.6 million. Existing town and/or private water sources will contribute to this distribution segment. This trunk line will ultimately be interconnected with the remainder of the Route 40 trunk line for efficient distribution and drought redundancy.
- **Eastern Corridor Water Distribution - North East to Elkton.** County will construct a 27,500 LF, 16-inch water distribution trunk line to serve this designated growth area and two elevated storage tanks would potentially be needed. Estimated cost is \$5.5 million. An interconnect from excess Delaware sources and/or an area surface or groundwater source will contribute to this distribution segment. This trunk line will ultimately be interconnected with the remainder of the Route 40 trunk line for efficient distribution and drought redundancy.
- **Northeast River Total Maximum Daily Load Implementation Strategy.** Cecil County's ability to maximize the size of the Northeast Wastewater Treatment Plant within the TMDL goals is essential to the County's BRAC readiness. An aggressive but responsible implementation strategy that minimizes use of septic systems in marginal soil areas and maximizes use of aggressive wastewater treatment is needed. County requests that the MDE Secretary arrange high level cooperation for this critical goal.
- **Northeast River Wastewater Treatment Plant Service Area Feasibility Study.** Consultant has been hired to establish the necessary extent of the final service area and evaluate the likelihood that TMDL or other restraints will permit a treatment plant of that size. Fully funded by Cecil County (\$50K) with expected completion in March 2006. MDE interaction, particularly relative to the TDML questions, is requested to make this study a successful planning product.
- **Northeast River Wastewater Treatment Plant Upgrade.** Subsequent to the TDML implementation strategy and the feasibility study, Cecil County will design and construct a plant upgrade to increase flow capacity and effluent to ENR levels. Because size and configuration of the plant is unknown at this time, costs cannot be projected.
- **Regionalization of Elkton Wastewater Treatment Plant.** Cecil County believes that the Town of Elkton would enjoy lower unit costs for its WWTP upgrade if it included capacity for areas west of Elkton, consistent with the County's Comprehensive Plan, and the County is prepared to participate in a variety of possible roles to assist with such a

regional service area plan. Elkton has not historically welcomed this. County request that the MDE Secretary convene high level discussions with County and Town officials to fully explore this option before Elkton finalizes its two phase upgrade design to 3.2/4.8 mgd.

* Alternative "Elkton West" Wastewater Treatment Plant. Cecil County's readiness depends on the creation of water and sewer infrastructure west of the Town of Elkton. If regionalization of the Elkton WWTP is not realized, Cecil County believes that substantial environmental improvement (25% reduction in oxygen demand to the Big Elk Creek) could be realized with a regional WWTP that absorbs existing, smaller, aging facilities with far less aggressive treatment capabilities. The creation of a 2.0 mgd WWTP, treating to ENR levels can likely absorb the existing small plants in the area and provide much of the build out flow capacity to support the designated growth areas west of Elkton, while dramatically reducing the pollutant loading to the Big Elk Creek. County requests that the MDE Secretary support this regional absorption plan if a regionalization plan with Elkton WWTP cannot be accomplished.

EDUCATION

- **K-12 Facilities Expansion.** With the BRAC decisions that will impact this region there is a need to increase capital budget resources to address building renovations/additions that will increase seat capacity for rising student enrollment and current expense dollars to provide programs and equipment to better prepare our students for the workforce challenges they will face upon graduation.
- **Additional Funding Needs for K-12 Public Education.** Comprehensive Career and Technology High School. This project was recently approved by the Board of Education. This facility will expand the program which currently serves two hundred students to six hundred students. Career and technology programs will ensure that students graduate from high school prepared to enter the workforce and/or continue their education. The second benefit from this project will be to absorb high school student enrollment increases. The total projected budget is \$41,422,000, with the State funding request at \$19,696,000 and local funding request at \$21,725,612.
- **Four Year University Annex. Math/Science Facility.** The BRAC initiative will have tremendous learning/training implications for Cecil Community College and our four-year university partners particularly in the areas of science and technology. Fiscal support is needed to accelerate program development for engineering, science, biotechnology and related math/science programs to support workforce development needs. The total project cost is \$5,400,000 supplemented by an approximate \$1million local in kind contribution from the developers of Bainbridge with \$1.3 million build out costs for laboratory and curriculum development.